

# **FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

## **ENFORCEMENT RULES**

# CONTENTS

<b>Purpose.....</b>	<b>1</b>
<b>Definitions.....</b>	<b>2</b>
<b>Violations.....</b>	<b>5</b>
<b>Enforcement .....</b>	<b>6</b>
<b>Penalties.....</b>	<b>16</b>

# PURPOSE

It is the purpose of these rules to implement the violation, enforcement and penalty provisions statutorily authorized pursuant to A.R.S. §§48-3603(D), 48-3609, 48-3613, 48-3614, 48-3615, 48-3615.01, 48-3622, 48-3626 and FCD Resolution No.\_\_\_\_\_.

These rules will:

1. Identify what constitutes a violation of the flood control statutes and regulations,
2. Authorize and specify the enforcement procedures, and
3. Establish the penalties and remedies available for violations.

# DEFINITIONS

In these rules, unless the context otherwise requires:

1. **“Administrative Hearing”** means a proceeding wherein evidence is taken for the purpose of determining an issue of fact and reaching a decision on the basis of that evidence. This proceeding takes place outside the judicial process and before a hearing officer who has the authority to conduct such hearings.

2. **“Administrative Search Warrant”** means an order in writing issued in the name of the State of Arizona, signed by a magistrate, directed to a peace officer, commanding him to accompany an appropriate official to search and inspect property in the interest of the public health, safety or welfare as part of an inspection program authorized by law.

3. **“Alleged Violator”** means any person as herein defined who violates any flood control statute, regulation, ordinance, rule or terms and stipulations of a floodplain permit.

4. **“Cease and Desist Order”** means an order from the Flood Control District prohibiting the person or entity to which it is directed from undertaking or continuing a particular activity or course of conduct.

5. **"Development"** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of materials and equipment located within the Special Flood Hazard Area.

6. **"District"** means a flood control district organized pursuant to ARS 48-3602(A).

7. **"Flood"** or **"floodwaters"** means a temporary rise in water level including groundwater or overflow of water onto lands not normally covered by water.

8. **"Floodplain"** means the area, adjoining the channel of a watercourse, susceptible to inundation by a base flood including areas where drainage is or may be restricted by man made structures that have been or may be covered partially or wholly by flood water from the one hundred-year flood.

9. **"Floodplain regulations"** means the codes, ordinances and other regulations adopted pursuant to the authority granted in A.R.S. § 48-3603 through 48-3628 relating to the use of land and construction within a delineated floodplan and floodway or other special flood hazard areas.

10. **"Floodway"** means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.

11. **"Hearing Officer"** means the individual(s) appointed by the Board of Directors of the Flood Control District of Maricopa County to hear and decide all civil proceedings established by any ordinance, regulation, rule or provision enacted or adopted by the Board of Directors.

12. **"One hundred-year flood" or "base flood"** means a flood that has a one per cent chance of being equaled or exceeded in a one year period, based on the criteria established by the director of water resources.

13. **"Other Designated Representative"** means a person over eighteen years of age, other than an attorney, authorized in writing by the owner or alleged violator to represent them in a public hearing before the Hearing Officer. The written authorization shall be in a form sufficient to satisfy the Hearing Officer that the person has in fact been authorized to act in the owner or alleged violator's behalf, and that they understand and agree to be bound by actions taken by the designated representative in proceedings before the Hearing Officer.

14. **"Peace officers"** means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, peace officers who are appointed by a multi-county water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, and police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board.

15. **"Person"** means an individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.

16. **"Regulatory flood elevation"** means the elevation which is one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.

17. **"Remediation"** means returning a site that has been disturbed to an acceptable condition of flow conveyance, erosion control, and environmental compliance by actions of the property owner or their representative.

18. **"Watercourse"** means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

DRAFT

## **VIOLATIONS**

A. It is unlawful for any person to engage in any development to divert, retard, or obstruct the flow of waters in any watercourse without securing the written authorization from the Board of Directors of the Flood Control District, the Floodplain Review Board or the Floodplain Administrator, as required by the Floodplain Regulations for Maricopa County in force at the time of the violation.

B. It is unlawful for any person to violate any other statutes, regulations, ordinances or rules governing floodplains including (1) the Floodplain Regulations for Maricopa County, (2) the Drainage Policies and Procedures for Maricopa County, Arizona, and (3) any other rules or ordinances adopted pursuant to authority granted to the Flood Control District under state statute.

C. It is unlawful for any person to engage in development in the floodplain without a Floodplain Use Permit or to engage in any development that is not in compliance with an active Floodplain Use Permit.

D. It is unlawful for any person, without written authorization from the Board of the Flood Control District, to damage or interfere with a facility that is owned, operated or otherwise under the jurisdiction of the Flood Control District.

Commission of any of these unlawful acts constitutes a violation.

# **ENFORCEMENT**

## **I. Scope of Inspections**

### **A. Routine Inspections**

The Chief Engineer or his designee may have reasonable access for routine inspections during regular business hours. In case of emergency, the District may inspect at any time. A District representative shall attempt to give forty-eight hours advance notice of the inspection and the owner his designee or the alleged violator may accompany the District on the inspection. In addition, the District may include the right of inspection at any time and without notice as part of the floodplain permit authorization. A report of the inspection shall be made and kept in the records of the District with a copy sent to the owner of the property or the alleged violator within thirty (30) days after the inspection.

### **B. Violation Inspection**

1. If a report of a violation is received, the violation shall be investigated and inspected as necessary. If a District representative encounters damage or interference with a District facility, he shall report it to the District. The Chief Engineer or his designee shall review all alleged violations of the regulations, ordinances, rules or guidelines of the District.

2. If an inspection is required to ascertain if a violation is occurring of any flood control statute, regulation, ordinance or rule and access is denied, the Chief Engineer shall apply for and obtain an administrative search warrant. The search warrant shall be served by a peace officer. A report of an inspection made pursuant to this subsection shall be prepared and kept in the records of the District. A copy of this report shall be mailed or otherwise delivered to the owner of the property or alleged violator within fifteen (15) days after the inspection.

### **C. Reinspection**

Reinspection shall be conducted within thirty (30) days after the date set forth in the notice of violation to verify the correction of an alleged violation, or for a cease and desist order, within ten (10) days after the notice of violation is served. If the alleged violation has not been corrected at the time of the reinspection, the District representative may, in writing, at their discretion, if they are convinced that a reasonable attempt is being made to correct the alleged violations, grant an extension of time, not to exceed sixty (60) calendars days in two incremental periods of thirty (30) days each, for completion of the corrections of the alleged violations as set forth in the notice. The first extension shall commence at the time of reinspection with the second extension, if applicable, beginning at the termination of the first extension.



**D. Records Inspection**

At all times, the inspection may include viewing the set of development plans bearing the approval of the District required to be kept on site pursuant to the Floodplain Regulations. No other records may be inspected nor the interior of any building.

**E. Inspections for Unauthorized Damage and Interference with District Facilities**

A District representative who encounters unauthorized damage or interference with District facilities shall document in a report such damage or interference which shall be kept in the records of the District.

## **II. Notice of Violation**

### **A. Contents of Notice of Violation**

1. The notice of violation shall contain a specific description of the nature of the violation, where the violation is occurring and a specific description of the facts constituting the alleged violation.

2. The notice of violation shall identify the provisions of the applicable statutes, regulations, ordinances, rules or terms of the applicable permit which have been violated.

3. The notice of violation shall identify the actions required to correct the violation and order to cease and desist any ongoing activity that is not in compliance with the applicable statutes, regulations, ordinances, rules or terms of the applicable permit.

4. The notice of violation shall set forth a date by which the violation must be corrected.

5. A cease and desist order is effective on the date it is served.

6. The notice shall contain the date, time and place where the person responding may appear to show cause why the notice of violation should be vacated.

7. The notice shall also contain a return form that the recipient can use to either admit the allegations or request a hearing in front of a hearing officer.

### **B. Service of Notice of Violation**

If a District representative determines that a violation is occurring on the subject property, he shall serve, or cause to be served, a notice of violation to the property owner and the alleged violator. If a District representative determines that a District facility has been damaged or is being interfered with, he shall serve, or cause to be served, a notice of violation to the alleged violator. For the purposes of this section, service shall be deemed complete upon:

1. Personal service to the recipient;
2. Receipt of the return receipt when mailing notice of violation to recipient, postage pre-paid, for certified mail, return receipt requested;
3. Expiration of ten (10) business days from the date of posting the notice of violation on the property.

Where the recipient is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the county. Where the recipient is a corporate or other entity, the address for the notice shall be the address of the statutory agent, or if none, the address from the most recent records of the Corporation Commission or Secretary of State. Service by posting of the notice of violation may only be used where the owner, operator or alleged violator cannot be located after reasonable efforts by the District.

DRAFT

### **III. Responses to the Notice of Violation**

Upon receipt of a notice of violation a person may:

1. Admit the allegations by appearing on the date and time indicated in the notice of violation to enter such admission.
2. Admit the allegations by mailing or delivering to the District the form accompanying the notice of violation indicating in writing the admission to the allegations. This admission shall include an agreement to acquire any permits as necessary, an agreement to remedy the violation in the manner requested by the District, or an agreement to remedy the damage or interference in accordance with terms determined by the District.
3. Deny the allegations by appearing at the date and time indicated in the notice of violation to enter such denial. This shall be deemed to be a request for a hearing unless the District has since withdrawn the notice of violation.
4. Deny the allegations by mailing or delivering to the District a form accompanying the notice of violation indicating in writing and signed by the owner or alleged violator a request for a hearing.
5. No response or appearance by the owner or alleged violator or anyone on their behalf will be construed as a request for a hearing.

## **IV. Hearing Requests**

1. A request for a hearing shall be forwarded to a Hearing Officer. The Hearing Officer shall be appointed by the Flood Control District Board of Directors and may be an employee of the District.

2. The Hearing Officer shall set a date, time and place for a hearing. The Hearing Officer shall cause notice of the hearing to be served on the owner or alleged violator and the Floodplain Administrator.

3. Notice of the hearing and a copy of the notice of violation shall be personally served on the owner or alleged violator at least ten (10) days prior to the hearing. Service of the notice shall be affected by delivering a copy of the hearing notice and the notice of violation to an individual personally or by leaving copies thereof at that individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein. Service of the notice shall be affected by delivering a copy of the hearing notice and notice of violation to a corporate or other entity by leaving copies thereof with the entity's statutory agent or, if none, at the entity's most recent address as reflected in the records of the Corporation Commission or Secretary of State.

4. If the Hearing Officer is unable to personally serve the notice, the notice may be served by depositing the notice and a copy of the notice of violation in the post office, postage prepaid, to be sent to the person to be served by any form of mail requiring a signed and returned receipt. A notice served by this alternative method shall be served at least thirty (30) days prior to the hearing.

## **V. Hearing Procedures**

Any hearing held pursuant to this section shall be open to the public. Proceedings shall be audiotaped. A record of the proceedings may be made by a court reporter at the owner or alleged violator's expense if they so request.

### **A. Parties**

1. The owner or alleged violator and the District representative must appear before the Hearing Officer on the date, time and place designated for adjudication of the alleged violation.

2. An owner or alleged violator may be represented by an attorney or other designated representative. The District may be represented by the County Attorney.

3. If any party desires to be represented by counsel or a designated representative at the hearing, that party must provide written notice of such representation to the Hearing Officer and the opposing party prior to the hearing. The party so desiring such representation by counsel must deliver to the District and the opposing party the notice of representation a minimum of 24 hours prior to the scheduled date and time of the hearing. Representation by counsel may not be permitted at the hearing unless proof of notification is produced at the hearing.

### **B. Discovery**

1. Pre-public hearing discovery shall not be permitted (i.e., no depositions, interrogatories, etc., will be allowed prior to the actual public hearing).

2. Immediately prior to the public hearing, both parties shall produce for inspection by the opposing party any prepared exhibits and written, taped or recorded statements of any witness which may be offered at the public hearing. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

### **C. Rules of Procedure**

1. The Arizona Rules of Evidence shall not apply. Evidence is subject to the decision of the Hearing Officer whether it is relevant and material. The County Attorney may present evidence on behalf of the District. This is not to be construed as abrogating any statutory provision relating to privileged communications.

2. If the alleged violator does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the alleged violator in default, thereby admitting all relevant facts set forth in the notice of violation, find for the District and submit his findings, determination and

recommendation to the Chief Engineer within thirty (30) days of the hearing.

3. If the District representative does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the District in default, thereby admitting that no violation exists, and submit his findings, determination and recommendation to the Chief Engineer within thirty (30) days of the hearing.

4. Decisions of the Hearing Officer, the Chief Engineer or the Board of Hearing Review shall be available to any party to the hearing.

#### **D. Conduct of the Hearing**

1. The Hearing Officer shall call the case and briefly describe the procedures to be followed. The Hearing Officer may question any or all witnesses or parties to the action. No person may be examined at a hearing except by the Hearing Officer, the defendant or his attorney or designated representative, and the District representative or his attorney.

2. The Hearing Officer shall give oaths and all testimony shall be given under oath or affirmation.

3. All witnesses for the District's case-in-chief, other than the owner or alleged violator, shall be required to testify prior to the owner or alleged violator being required to testify or to produce evidence. However, a witness not called in the District's case-in-chief may be called in rebuttal to testify to an issue raised by the owner or alleged violator.

4. The parties shall stipulate to all facts not in dispute.

5. The order of proceedings shall be as follows:

- a. Testimony of District's witnesses
- b. Testimony of owner or alleged violator's witnesses
- c. Testimony of District's rebuttal witnesses, if any
- d. Testimony of owner or alleged violator's rebuttal witnesses, if any
- e. Argument of parties or their counsel or designated representatives

6. At the discretion of the Hearing Officer, cross examination shall be limited to matters relevant to witnesses' testimony.

#### **E. Decision and Order**

1. The Hearing Officer shall submit written findings and recommendations for the appropriate measures to be taken to abate or ameliorate any harm or damage

arising from the violation and the imposition of any civil penalties to the Chief Engineer and the owner or alleged violator within thirty (30) days after the date of the hearing.

2. The Chief Engineer shall issue a final decision and order. The final decision shall be in the form of findings of fact and conclusions why those facts constitute violations of statutes, regulations, ordinances or rules. The final order shall be in the form of measures required to abate or ameliorate any harm or damage resulting from the violation, requirements for permits and the imposition of civil penalties. The final decision and order shall be personally served on the parties to this action and is effective upon service.

**F. Right to Appeal**

Either party to a final decision and order of the Chief Engineer may request a review of the final decision and order by the Board of Hearing Review. A request for review shall be delivered to the Clerk of the Board of Directors within fifteen (15) days after the effective date of the final decision and order.



## **VI. Board of Hearing Review Procedures**

A. The review shall be limited to the record of proceedings before the Hearing Officer and no new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted at the hearing, a copy of the audiotape of the hearing and a copy of the Chief Engineer's final decision and order. If the Board of Hearing Review determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.

B. Notice of appeal shall be given to the Chief Engineer not more than ten (10) working days after the final decision and order has been served on the parties. The notice shall set forth all relevant facts, the judgment being appealed and the reasons therefore.

C. Upon receipt of the notice of appeal, the Chief Engineer shall, within thirty (30) calendar days, prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the appeal to be heard by the Board.

D. The clerk of the Board of Hearing Review shall notify all parties of the date, time and place of the appeal hearing by certified mail to the last known address of the parties at least ten (10) working days prior to the date of the hearing.

E. The Chairperson of the Board of Hearing Review shall preside at all appeal hearings and shall decide on all questions pertaining to procedure.

F. Each party shall be allowed five minutes to present oral arguments. Time limits may be extended at the discretion of the Chairperson.

G. All members of the Board may question all parties appearing before them.

H. The decision to uphold or deny the Chief Engineer's final decision and order shall be decided upon by motion and a majority vote of the members of the Board of Hearing Review.

I. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. § 12-901 et seq.

# PENALTIES

## **Criminal Penalties**

The penalty for a criminal violation of the statutes, regulations, ordinances or rules of the District is a Class 2 Misdemeanor. A Class 2 Misdemeanor is punishable as follows:

**For an Individual:** A fine not in excess of \$750.  
Jail time not to exceed four (4) months.

**For an Enterprise:** A fine not in excess of \$10,000.

A PERSON OR ENTITY SHALL BE CHARGED WITH A SEPARATE VIOLATION FOR EACH AND EVERY DAY DURING ANY PORTION OF WHICH ANY VIOLATION OF ANY PROVISION OF THE STATUTES, REGULATIONS, ORDINANCES OR RULES IS COMMITTED, CONTINUED OR PERMITTED BY SUCH PERSON.

## **Civil Penalties**

The civil penalty for violation of any statute, regulation, ordinance or rule is a fine not to exceed that which is chargeable for a Class 2 Misdemeanor. That fine is as follows:

**For an individual:** A fine not in excess of \$750.

**For an Enterprise:** A fine not in excess of \$10,000.

A PERSON OR ENTITY SHALL BE CHARGED WITH A SEPARATE VIOLATION FOR EACH AND EVERY DAY DURING ANY PORTION OF WHICH ANY VIOLATION OF ANY PROVISION OF THE STATUTES, REGULATIONS, ORDINANCES OR RULES IS COMMITTED, CONTINUED OR PERMITTED BY SUCH PERSON.

## **Strict Liability**

In addition to any criminal or civil penalties available, a person who damages or interferes with a facility owned, operated or otherwise under the jurisdiction of the District without written authorization from the District is strictly liable for both of the following:

A. Any actual damages to persons, property or real property such as structures, landscaping, etc. that is caused by the damage or interference, and

B. Payment of costs to the District for remediating the damage or interference.